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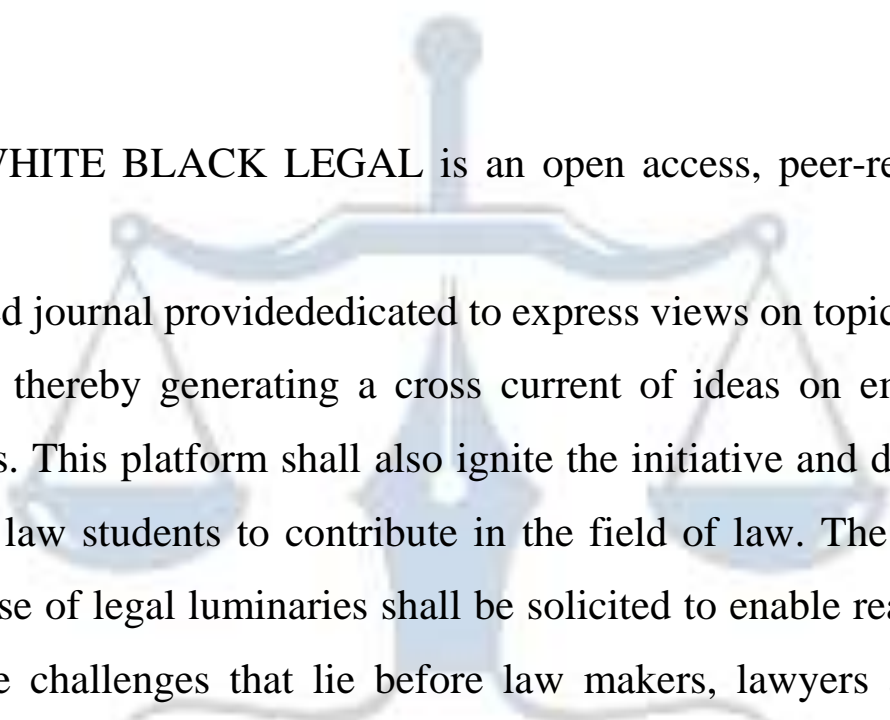


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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

JUDICIAL OVERSIGHT IN CORPORATE CRIME:
ANALYSING THE ROLE AND IMPACT OF THE JUDICIARY
IN ADDRESSING CORPORATE MISCONDUCT

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Abstract

In India, Corporate Crime is Increasing Recent Decade, The Realm of Criminal Law has Experienced some Notable changes in the Recent Decade. This Paper will Explore the different Categories of Corporate Crime and how they would Affect the Society at Large. The Analysis would start with Describing about the Current Provisions in Relation to Corporate Crimes which are present which is Prescribed in the Companies Act. It talks about how Corporates are only Required to pay fines rather than Imprisonment.

In the Present Scenario, The Current Scenario of Payment of Fines can be Viewed as an Inadequate Method of Providing Justice and there is a Requirement of a More Proactive Response. This Concept has also been Developed in India with the Help of a Doctrine called as the Identification Doctrine where in the Recent Decision of Reliance Natural Resources Limited v. Reliance Industries Limited, the principle used behind the court coming to the Conclusion was that Ambani being the Majority Shareholder had the Controlling Mind and will of the company have Identified few Key Personnel whom should be held liable for their Crimes.

This paper underscores the imperative for a proactive international response, including ongoing legislative and policy changes, to confront emerging challenges and ensure the protection of citizens who are being affected in result of these Fraudulent Activities. Hence the Identification Doctrine must be Analysed more Crucially as Fines cannot be Regarded as Judicial Justice in Matters Relating to Crimes Committed by Corporate Firms

Keywords: Corporate Crimes, Role of Judiciary, Identification Doctrine, Corporate Accountability

Introduction

Businesses now play a crucial role in our society. They have a big effect on the environment, society, and economy. Multinational corporations (MNCs) are companies that operate both within and outside of their home nation. These MNCs have a significant impact on most facets of modern life. Over the past few centuries, their powers have increased at an astounding rate, often matching those of whole nations.

It is crucial to enforce accountability and control over these MNCs and companies. The increasing importance of companies has led to a higher likelihood of us being victims of their criminal activities. The growth of the corporate sector as a result of information technology, globalization, and technological advancement has given rise to the idea of corporate criminal liability.

Two components form the basis of a criminal liability:

- I. actus reus, which is an act or omission of guilt
- II. Mens rea, which is defined as a guilty or forbidden state of mind

The Latin expression "actus non facit reum nisi mens sit rea"—which indicates that an act alone does not constitute guilt unless the mind or intent is also proven to be guilty—is the source of this idea. Over the years, corporate criminal law has encountered numerous obstacles, the most significant of which is the inability to establish mens rea. But in the 21 Century there is change in regarding to fact that corporations can be held liable for their actions done

In recent decades, India, one of the largest and fastest-growing economies in the world, has seen a substantial growth and alteration of the business landscape. Opportunities and concerns, particularly with regard to corporate wrongdoing, have come with this rise. Corporate companies are capable of committing a variety of crimes, such as fraud, environmental infractions, violations of product safety regulations, and more. Consequently, it is extremely important to look at corporate criminal responsibility in the framework of Indian law. It is crucial for companies, solicitors, and legislators to understand the complex interactions between business entities and the law in this day of increased scrutiny¹. The legal framework

¹ V. Vijaya Lakshmi, Corporate Criminal Liability - A Critical Legal Study, Volume 5 Pen Acclaims, pg. - 12, January 2019

in place to hold businesses

This examination of corporate criminal accountability under Indian law will make those responsible for their actions more transparent, ensuring that justice is served and public trust in the business sector is maintained. Significant judicial and legislative interpretations of corporate criminal liability, or CCL, have occurred in the Indian legal system in recent years. The Indian legal system has recognized the need to ensure that businesses are held accountable for their actions, especially when such actions result in criminal misconduct. This acknowledgement is predicated on the understanding that businesses are artificial entities that function through their agents and that the economy, society, and environment may all be significantly impacted by the actions of these businesses.

Types of Corporate Criminal Liability

Traditional crimes committed by individuals differ from corporate crimes. As a result, there isn't a distinct division for crimes committed by corporations. Corporate crime comes in different forms. Corporate crimes include insider trading, fraud, bribery, counterfeiting, and blackmail, among other grave offenses. Corporates have the ability to commit a wide range of crimes, such as those that cause physical harm, such as industrial disasters, workplace hazards, dangerous product manufacturing, industrial pollution that degrades the environment, and violations of human rights. When different possibilities and methods are accessible in the business environment and culture, the impact on the economic front is catastrophic. There are certain offences that is said to still plague our society due to its after effects one of them could include the Bhopal Gas Tragedy where it does plague the Indian Nation still to this date

Corporate executives are primarily responsible for the vast majority of deaths because they have violated occupational health and safety standards or have chosen not to create adequate standards. As a result, corporations may be held liable for neglecting or failing to adopt or provide safety measures to workers that are required in the workplace as mentioned under ILO guidelines. Organized crimes or transnational crimes are the new form of criminality in which along with organized groups the corporation is also found to be indulged in. Money Laundering, Cyber Crimes, Terrorist Funding, Drug Trafficking, and Human Trafficking

The people in general also experiences the violence in the form of pollution and other green

crimes. There are many different green crimes but they are all committed for the sake of profit and they all harm the environment and even though we have a mechanism or regulations to tackle such problem (environment protection act 1986) most of the time corporates get away from any punishments or criminal liability. The multinational corporations have moved production plants to countries that do not have many laws regulating pollution, and even though there are certain mechanism or regulation to deal with such issues in India which comes under the “environment protection act 1986” but still the corporation who do enjoys the culture of impunity got away from any criminal liabilities as they continued to be involved in environmental damage which has been very significant.

The Identification Doctrine in the UK and Its Implications for India

Economic criminal prosecution of corporations has never been a simple undertaking. When it comes to determining who should be held accountable for an alleged violation, the "directing mind and will" test frequently fails to provide a clear picture of accountability in complicated organizational systems with multiple levels of management and decentralized decision-making processes. This makes finding the person who has committed the crime a difficult endeavour. Identification Doctrine is said to be defined as Doctrine where the Senior level managers are held liable for the crimes committed by them during the period of them occupying the post. The mental element (Mens rea) necessary for a conviction for a crime was provided by the company's assignation of blame or its own culpability in the actions of these officers. This approach was judicially expressed by Lord Denning in the case of

HL Bolton (Engineering) Co Ltd v Tf Graham & Sons Ltd² as

"A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with the directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than the hands to do the work and cannot be said to represent the mind or the will. Others are directors and managers who represent the mind and directing will of the company, and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such

The position Involving Identification Doctrine in India is said to be different as corporations are said to often taking the defence of staying behind the corporate Veil and in India the position

² 1957] 1 QB 159 at 172

is not fixed with the recent Supreme court Judgment

In the case of Identification Doctrine both the Mens rea and actus reus have to be constituted to involve a crime for corporations. This has been changed to the legislation of Economic Crime and Corporate Transparency Act 2023 which is said to improve upon the previous legislation. By extending the existing identification principle and substituting the Senior Manager Test for the outdated "directing mind and will" test, the ECCTA holds corporations accountable for a range of criminal offenses. In order to prove criminal culpability, the reform expands the reach of senior executives' accountability whose activities can be linked to a corporation. S. 196 of the ECCTA increases the number of people whose activities can make the corporate body liable for economic crimes by extending liability to partnerships or businesses where a senior manager is involved in the offense. Prosecutors will find it easier to make choices about charging and prosecuting firms and partnerships as a result of this development. The law modifies and expands the range of economic offenses for which corporations and partnerships may be held principally accountable.

This is proof of the fact that Identification doctrine is an evolving doctrine as it had remained the same for the past 50 Years and then had changed into the economic crime reforms act further enhancing the act to hold the accused responsible for their crime

The Effectiveness of Criminal Sanctioning in deterring Corporate Crimes

The criminal code has historically used penalties like jail time, fines, and the stigma associated with being a criminal to discourage particular undesired behaviour. Although opinions on the usefulness of these penalties in criminal law generally are divided, there is strong evidence that they can effectively prevent corporate criminality. Because corporations are essentially profit-seeking organizations, they only decide to break the law when it seems like a good idea. A corporate choice to break the law would often involve a calculation of the likelihood of prosecution and the likely harshness of any punishment since profit-maximizing decisions are meticulously predicated upon the probability and amount of potential profit. By keeping these expenses high enough, unlawful business action should no longer have any potential benefits, and there should be no motivation for such activity.

Criminal penalties could be imposed on the company, its officers, or its workers in order to discourage improper corporate behaviour. of course, a corporation cannot be put in jail

significance to an inanimate business organization. The presence of fines can be viewed as a mere fee which can be seen as a meagre amount for corporations

Therefore, in addition to the set of civil fines, there should continue to be a separate set of criminal sanctions against individuals, including jail sentences, in the interest of fairness and effective deterrent. Deterrence alone is insufficient to support the use of criminal sanctions; instead, these measures should only be employed when the actor's wrongdoing and the gravity of the infraction combine to produce the level of moral culpability necessary for the imposition of formal community condemnation through the stigma of criminality. Forth Therefore, anytime someone purposefully conducts an illegal act while knowing that it is illegal, or intentionally commits an illegal act without knowing that it is illegal but realizing that it is, such consequences should be expressly approved.

Scope In India

We are also going to examine the growth and importance of the Doctrine of Identification in Indian Law during the recent years. Until recently courts were of the view that corporations cannot be held liable for their crimes as they do not possess the necessary Mens Rea but this was changed in later decisions. The Controversy was first addressed in the case of M. V Javali V. Mahajan Borewell³Co where it was held that an important type of white-collar crime is that committed by Corporations. Since a corporation has no physical body on which the pain of punishment could be inflicted, nor a mind which can be guilty of a criminal intent, traditional punishments prove ineffective, and new and different punishments have to be devised.

The real penalty of a corporation is the diminution of respectability, that is, the stigma. It is now usual to insert provisions to the effect that the Director or Manager who has acted for the corporation should be punished. But it is appropriate that the corporation itself, should be punished. In the public mind, the offence should be linked, merely with the name of the Director or Manager, Punishment of fine in substitution of imprisonment in the case of a corporation could solve the problem in one aspect; but at the same, it is necessary that there should be some procedure, like a judgment of condemnation, available in the case of an anti-social or economic offence committed by a corporation. This will be analogous to the punishment of public censure proposed for individuals.

³ AIR 1997 SC 3964

However, In India the view regarding holding corporations accountable has been differing in opinion and this paper does underscore into a more proactive response regarding Holding the managers personally liable for the crime that has been committed during the course of their employment as the managers are often using the corporate veil in order to shield themselves from any liabilities

Jurisprudential Analysis of "Corporate Criminal Responsibility: A Comparative Analysis" by Anthony O Nwafor

The paper "Corporate Criminal Responsibility: A Comparative Analysis" by Anthony O. Nwafor delves into the complex issue of attributing criminal liability to corporations. The author explores the historical reluctance of common law jurisdictions to hold corporations criminally accountable due to the inherent absence of mens rea in artificial entities. This paper examines the evolution of corporate criminal liability, focusing on the identification doctrine, and analyzes statutory reforms in various jurisdictions to streamline corporate criminal accountability.

- **Historical Context and the Identification Doctrine**

Initially, the notion of corporate criminal responsibility was met with significant resistance, primarily due to the artificial nature of corporations. As Nwafor points out, traditional common law courts struggled with the concept of attributing mens rea—a fundamental element of criminal liability—to corporations. The seminal statement by Baron Thurlow, "corporations have no soul to be damned; no body to be kicked," encapsulates this difficulty⁴.

The courts began addressing this challenge through the identification doctrine, which seeks to attribute the mental state of certain high-ranking officials to the corporation itself. This approach was first articulated in the UK in the early 20th century and further developed through cases such as *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd (1915)*⁵, where Lord Haldane identified the "directing mind and will" of the corporation⁶. The identification doctrine essentially posits that individuals who represent the company's mind and will can imbue the corporation with mens rea.

⁴ Nwafor, A. O. (2013). Corporate Criminal Responsibility: A Comparative Analysis. *Journal of African Law*, 57(1), 81-107. Retrieved from [JSTOR](<https://www.jstor.org/stable/24734855>).

⁵ *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd (1915)* AC 705.

⁶ Nwafor, A. O. (2013). Corporate Criminal Responsibility: A Comparative Analysis. *Journal of African Law*, 57(1), 81-107. Retrieved from [JSTOR](<https://www.jstor.org/stable/24734855>).

While the identification doctrine provided a framework for attributing criminal liability to corporations, it faced several limitations. Nwafor highlights that the doctrine's restrictiveness often led to inconsistent judicial outcomes. The doctrine necessitated a clear demarcation of who constitutes the "directing mind," often limiting liability to the actions of senior management and overlooking the culpability of lower-level employees acting on the company's behalf⁷.

- **Comparative Analysis of Jurisdictional Approaches**

Nwafor's comparative analysis reveals that jurisdictions such as the UK, USA, Canada, and Australia have adopted various strategies to overcome the limitations of the identification doctrine. These include:

1. **Vicarious Liability:** Some jurisdictions have incorporated civil law concepts like vicarious liability into criminal law, allowing corporations to be held liable for the actions of employees performed within the scope of their employment. This approach broadens the potential for corporate liability but can sometimes dilute the principle of mens rea.
2. **Strict Liability Offenses:** Statutory reforms in certain jurisdictions have introduced strict liability offenses for corporations, eliminating the need to prove mens rea. This shift emphasizes regulatory compliance and deterrence over individual culpability, as seen in environmental and safety regulations.
3. **Statutory Reforms:** Nwafor discusses significant statutory reforms in Australia and the UK, which aim to enhance corporate accountability. For instance, the UK's Corporate Manslaughter and Corporate Homicide Act 2007 establishes that corporations can be convicted for gross breaches of duty of care resulting in death. Similarly, Australia's Criminal Code includes provisions that allow for corporate criminal responsibility based on corporate culture and inadequate management practices.

- **Case Studies and Practical Implications**

Nwafor's analysis includes case studies from various jurisdictions to illustrate the practical application of these legal principles. In the United States, the *New York Central & Hudson River Railroad Co. v. United States*⁸ case established the principle of corporate criminal

⁷ Nwafor, A. O. (2013). Corporate Criminal Responsibility: A Comparative Analysis. *Journal of African Law*, 57(1), 81-107. Retrieved from [JSTOR](<https://www.jstor.org/stable/24734855>).

⁸ *New York Central & Hudson River Railroad Co. v. United States*, 212 US 481 (1909).

liability through vicarious liability⁹. In contrast, the UK's reliance on the identification doctrine was highlighted in the *Tesco Supermarkets Ltd v. Nattrass*¹⁰ case, which underscored the limitations of attributing liability solely to senior management¹¹.

- **Conclusion and Recommendations**

Nwafor concludes that while significant strides have been made in holding corporations criminally accountable, challenges remain. The identification doctrine, while foundational, is insufficient on its own. Jurisdictions must continue to refine and expand legal frameworks to ensure comprehensive corporate accountability. Nwafor suggests that a combination of approaches, including vicarious liability, strict liability offenses, and statutory reforms, can provide a more robust mechanism for corporate criminal responsibility.

Relevance of “Corporate Criminal Responsibility: A Comparative Analysis” in India

Nwafor's article provides a comprehensive comparative analysis of corporate criminal liability across jurisdictions like the UK, USA, Canada, and Australia, which helps to draw parallels and contrasts with India's legal system. This comparative approach highlights the strengths and limitations of the identification doctrine in a broader context. By tracing the historical context and evolution of the doctrine, the article sheds light on how it has been adopted and modified across different legal systems, influencing reforms in countries like India. Nwafor critically analyzes the doctrine's limitations, particularly its reliance on identifying the "directing mind and will" of a corporation, which presents challenges in attributing liability to complex corporate structures. The discussion on various statutory reforms and innovations, such as vicarious liability, strict liability offenses, and specific statutory provisions, provides insights into alternative mechanisms for corporate accountability, relevant to potential reforms in India. The inclusion of case studies from different jurisdictions illustrates the practical application of the doctrine and other corporate liability principles, offering concrete examples to compare with Indian case law and providing a deeper understanding of the doctrine's application and effectiveness in holding corporations accountable.

⁹ Nwafor, A. O. (2013). Corporate Criminal Responsibility: A Comparative Analysis. *Journal of African Law*, 57(1), 81-107. Retrieved from [JSTOR](<https://www.jstor.org/stable/24734855>).

¹⁰ *Tesco Supermarkets Ltd v. Nattrass** [1972] AC 153.

¹¹ Nwafor, A. O. (2013). Corporate Criminal Responsibility: A Comparative Analysis. *Journal of African Law*, 57(1), 81-107. Retrieved from [JSTOR](<https://www.jstor.org/stable/24734855>).

Notably, in *Standard Chartered Bank v. Directorate of Enforcement (2005)*¹², the Supreme Court held that corporations could be prosecuted and punished for offenses requiring mens rea, attributing the mental state of individuals controlling the company to the corporation. Similarly, in *Iridium India Telecom Ltd. v. Motorola Inc. (2011)*,¹³ the Court reiterated that corporations are liable for offenses requiring mens rea if committed by persons controlling the company's affairs. However, Indian courts face challenges in applying this doctrine to large corporations with complex hierarchies, where identifying the "directing mind and will" is problematic. To address corporate accountability, statutory reforms like the Companies Act, 2013, and various environmental laws imposing strict liability have been introduced. Using Nwafor's article, which provides a comparative analysis of corporate criminal liability across multiple jurisdictions, helps situate the Indian approach within a broader context. It highlights common challenges and unique adaptations, offering insights into potential improvements in India's application of the identification doctrine.

Potential developments in the judicial oversight of corporate crime in India

The environment of corporate governance and crime in India has shifted dramatically during the last several decades. As economic activity and corporate entities have increased, so have corporate crimes such as fraud, embezzlement, insider trading, and money laundering. The judiciary has played a critical role in creating corporate governance principles by overseeing and adjudicating corporate crimes. The following part examines potential developments in judicial monitoring of corporate crime in India, drawing on pertinent current case law.

Future Steps which can Result in Increased Application of Doctrine of Identification:

Several new themes are expected to impact India's future judicial control of corporate crime, notably in the context of the theory of identification:

1. Enhanced accountability mechanisms:

The courts is anticipated to advocate for more robust internal compliance systems in firms. This involves rigorous due diligence procedures, effective whistleblower rules, and strong internal auditing systems. Companies will be forced to develop extensive systems for preventing and detecting illicit activity.

¹² Standard Chartered Bank v. Directorate of Enforcement, (2005) 4 S.C.C. 530 (India).

¹³ Iridium India Telecom Ltd. v. Motorola Inc., (2011) 1 S.C.C. 74 (India)

2. Corporate Accountability and Liability:

It is possible that in the future, corporate liability and accountability concepts will be applied more strictly by judges. Judges are supposed to hold corporate entities accountable for corporate crimes, but they should also hold individual directors and officials accountable. By highlighting individual accountability in addition to corporate punishments, this change seeks to discourage future violators.

3. Corporate Liability Expands to Include Cybercrime, Data Breach, and Environmental Offences:

The judiciary must adapt to the changing nature of corporate wrongdoing and guarantee that legal frameworks remain relevant.

4. International Collaboration:

As company activities become more global, the court will collaborate with international legal agencies to address transnational corporate crimes. Mutual legal assistance treaties (MLATs) and extradition agreements will be extremely important in this respect.

5. Technological Advancements:

Integration of technology in judicial procedures is expected to improve corporate crime investigation and prosecution. Advanced forensic technologies, blockchain for transparent record-keeping, and AI for predictive analysis are likely to improve court oversight.

Recent Judicial Developments

Several recent cases highlight the judiciary's evolving approach towards corporate crime:

1. Nirav Modi and Punjab National Bank Scam¹⁴:

The judiciary was instrumental in this well-known case's investigation and prosecution of those responsible for the significant bank fraud. The case demonstrated how crucial court supervision is to guaranteeing financial crime perpetrators are held accountable.

2. IL&FS Crisis¹⁵:

By becoming involved in the IL&FS debacle, the judiciary showed that it was taking corporate misgovernance head-on. The court's proceedings underscored the need for senior management

¹⁴ *State Bank of India v. Nirav Modi*, (2020) 6 SCC 203.

¹⁵ *Union of India v. Infrastructure Leasing & Financial Services Ltd.*, (2020) 7 SCC 1.

responsibility and open company processes.

3. Satyam Scam Case¹⁶:

One of the biggest corporate scams in India, the Satyam affair resulted in severe sanctions for the business and its senior executives from the judiciary. This particular case established a standard for court decisions in the future and emphasised the significance of personal responsibility in corporate wrongdoing.

In conclusion, the future of judicial control of corporate crime in India, particularly in light of the theory of identification, could be made better. The judiciary's proactive approach, when combined with legislative improvements, is expected to strengthen the legal environment for corporate responsibility. The court is well-positioned to confront the intricacies of corporate crime by focussing on improved compliance systems, individual responsibility, and international coordination. As technology advances, the legal system must develop to enable thorough supervision and effective enforcement of corporate governance requirements.

International Legislations

Societies characterized by conflict make it extremely difficult to exercise even the most fundamental human rights and are more likely to witness egregious human rights breaches. It is frequently discovered that corporations either aid in or participate in the committing of such egregious abuses. The Rome Statute, which recognizes three main kinds of international crimes—genocide, war crimes, and crimes against humanity—is the only legally enforceable document that aims to hold people accountable for such egregious violations of their human rights. An individual may include corporate officers who are involved in international crimes, even though they are not specifically mentioned in the Statute

Roman Laws

However, the Rome Statute does not include "corporate liability." The specific statement, "The Court shall have jurisdiction over natural persons pursuant to this Statute," is found in Article 25(1) on individual criminal responsibility. Although a sizable majority of those involved in the Rome Statute's drafting acknowledged the benefits of including "juridical persons" (legal persons) under Article 25(1), the ICC's jurisdiction expressly excludes legal persons, or

¹⁶ *B. Ramalinga Raju v. State*, (2015) 1 SCC 705 (India)

"juridical entities," such as corporations or organizations. This has not yet been Amended or changed in the Roman Statues

Business Leaders on Trial for Complexity of Crime

Corporate agents have faced prosecution for their individual roles in international crimes, primarily from domestic criminal tribunals. Furthermore, legal lawsuit has been brought against both firms and individual corporate executives, for instance in the United States under the Aliens Tort Claim Act (ATCA). It is not obvious why the latter category should be included. The ATCA does not concern criminal law. It is a legal instrument that enables plaintiffs to sue persons, including foreigners who acted outside US territory, for breaches of international law before American courts. Moreover, it appears that the Court of Appeals of the Second Circuit, in the high profile *Kiobel* case, has closed the door for any litigations against corporations under ATCA. After an extensive analysis of court decisions, treaty law and opinions of legal scholars, the Court of Appeals concluded that ‘(...) corporate liability (...) is not a rule of customary international law that we may apply under the ATS (Alien Tort Statute). Accordingly, insofar as plaintiffs in this action seek to hold only corporations liable for their conduct in Nigeria (as opposed to individuals within those corporations) and only under the ATS, their claims must be dismissed for lack of subject matter jurisdiction.’¹⁷

Nonetheless, American courts in ATCA cases have previously offered useful guidelines for the assessment of responsibility of individual businessmen which are also of interest in the realm of criminal law

Conclusion

Corporate criminality is one of society's biggest issues. Corporate crime loopholes that lead to a legal resolution are meant to make a significant difference in society. Crimes done by the firm or by an individual working on its behalf that are legally accountable and penal are referred to as corporate crimes. Since corporate offenses are more successfully prosecuted under the law, an adjustment is required. One of the main threats to human survival and environmental preservation is the negative effects of industrialization and the environmental damage caused by some criminal activity. Given the current corporate operations, the criminal justice system must explicitly take into account the criminological and penological aspects. Clear and precise policies are necessary.

¹⁷ *Kiobel v. Royal Dutch Petroleum*, footnote 2, § 69.